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JAN 30 1991

Honorable Bill Bradley
United States Senator
Post Office Box 1720
Union, New Jersey 07083

Dear Senator Bradley:

This is in response to your letter dated December 17, 1990 written on behalf of your constituents, Mr. & Mrs. David Major of Gillette, New Jersey, concerning a number of issues relating to the Environmental Protection Agency's (EPA's) recent activities addressing asbestos contamination in the Great Swamp area of New Jersey.

The primary concern expressed in your constituents' letter deals with EPA's decision not to reestablish a horse riding track on their property. The following discussion outlines EPA's position with respect to this issue and sets forth the reasons why, despite every consideration, the Agency cannot reestablish the horse riding track.

The Majors' property is part of the Asbestos Dump Site listed on the National Priorities List. In August 1990, EPA collected soil samples from the property which exhibited the presence of up to five percent (5%) chrysotile asbestos. EPA transmitted this data to the Agency for Toxic Substances and Disease Registry (ATSDR) for review and consultation. Based upon this data, ATSDR advised EPA that, among other things, residents should be disassociated from the asbestos contamination and that activities which generate dust (such as horseback riding) be terminated. EPA and ATSDR informed the Majors of these conclusions and the need to close the riding track on various occasions including meetings held in August and September 1990.

In the interest of expediting activities to reduce the potential for asbestos exposure and migration to protect public health, EPA elected not to exercise legal alternatives to close the riding track but instead considered the Majors' request to relocate the riding track elsewhere on their property. EPA concluded it could not properly reestablish the Majors' riding track; this decision was discussed with the Majors at a December 19, 1990 meeting with my staff.

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Asbestos disposal has occurred on the parcel of land where the track is located. The Majors are the current owners of that parcel, and EPA has documentation establishing their ownership and knowledge of disposal activities at the time when such activities took place. Documents also demonstrate that they received payment from National Gypsum (the generator) for the landfilling of asbestos waste on their property.

Under the Comprehensive Environmental Response, Compensation and Liability Act as amended (CERCLA), current as well as prior owners during the time of disposal may be held liable for response costs incurred by the government. Liability is strict, that is, the government need not demonstrate any negligence or willful wrong-doing by such an owner in order to establish liability.

The fact that the Majors are a potentially responsible party (PRP) limits the type of activities that EPA may conduct on their property. Although EPA may utilize public funds to relocate businesses, it is not appropriate to expend monies to relocate a business, owned by a PRP when such expenditures may be the subject of a cost recovery lawsuit against that very party. Nonetheless, despite the Majors' PRP status, EPA considered the mitigating circumstances surrounding their liability in determining the appropriateness of reestablishing the riding track. EPA pursued the possibility of reestablishing the track from every conceivable angle until all options were exhausted. What we consistently found was that reestablishment of the track using CERCLA monies is not permissible. The delay in advising the Majors of EPA's decision not to reestablish the track was associated with EPA's continued efforts on their behalf.

If you have any further questions or need additional information, please let me know or have your staff contact Jeane Rosianski of the Office of External Programs at (212) 264-7834.

Sincerely,

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Constantine Sidamon-Eristoff
Regional Administrator

cc: Commissioner Judith A. Yaskin
New Jersey Department of
Environmental Protection

bcc: Alice Green
Executive & Congressional Communications

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